IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

CRP.No. 1050 of 2005

OPEA.33/2003 of ADDL.DISTRICT COURT,KOTTAYAM

REVN. PETITIONER: PETITIONER:

K.J.THOMAS, S/O.JOHN,
KALLOLIKAL HOUSE, PLASSANAL P.O.,
THALAPALAM VILLAGE, KOTTAYAM DISTRICT.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL

RESPONDENTS: RESPONDENT:

KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
KSEB, VAIDHYUTHI BHAVAN,
THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, ALONG WITH CRP NOS. 1043 & 1114 OF 2005 AND 777 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. Nos.1050, 1043, 1114 OF 2005

and 777 OF 2007

Dated this the 28th day of November, 2007

O R D E R

C.R.P.No.1050 of 2005 is filed by the petitioner in O.P.(EA) No.33 of 2003, on the file of the Court of the Additional District Judge, Kottayam. C.R.P.No.1114 of 2005 is filed by the petitioner in O.P.(EA) No.17 of 2002. The petitioner in O.P.(EA) No.32 of 2003 has challenged the order of the court below in C.R.P.No.1043 of 2005, while the Kerala State Electricity Board has filed C.R.P.No.777 of 2007 against the very same order. The Board has not challenged the orders in O.P.(EA) Nos.33 of 2003 and 17 of 2002. The court below disposed of the aforesaid three Original Petitions along with O.P.(EA) Nos.16 of 2002 and 40 of 2002. It is submitted that the orders in O.P.Nos.16 and 40 of 2002 are not challenged by the petitioners therein or by the Board.

2. For drawing 110 KV DC tap line to Erattupetta, trees belonged to the petitioners were cut and removed. Small extent of lands were also acquired for erection of towers. The petitioners/claimants claimed compensation for tree cutting as well as for acquisition of land. The compensation was also claimed on the ground of diminution of land value. The petitioner in O.P.(EA) No.32 of 2003 claimed a sum of Rs.9 lakhs as

enhanced compensation while the petitioner in O.P.(EA)No.33 of 2003 claimed Rs.11,35,000/- as enhanced compensation. The petitioner in O.P.(EA) No.17 of 2002 claimed a sum of Rs.10,73,500/- as enhanced compensation. While some of the petitioners claimed Rs.25,000/- as land value, some others claimed at Rs.15,000/- to Rs.20,000/- per cent of land.

3. Before the court below oral and documentary evidence were adduced. The petitioners in the Original Petitions from which these Revisions arose were also examined as PWs.2, 3 and 4. Other witnesses were also examined.

4. The court below, though took note of the fact that there is a consistent upward trend in the land value, held that the petitioners are entitled to only Rs.3,000/- as land value for the land acquired for the erection of towers. For calculating the compensation on the ground of diminution of land value, the court below took the same yardstick and fixed the land value at Rs.3,000/- per cent and 10% of the same was awarded as compensation for diminution of land value. That means, the petitioners would be getting only Rs.300/- per cent of land as compensation for diminution of land value. The petitioners/claimants contended that the court below has not stated any reason as to how it

arrived at the conclusion that the land value is Rs.3,000/- per cent of land. The order does not disclose production of any data by the Board to arrive at a conclusion as to the real market value of the land. The claimants stated that they are entitled to enhanced compensation and the land value ranges from Rs.15,000/- to Rs.25,000/-. There is no discussion with reference to any document or any specific evidence touching upon the market value of the land. Therefore, I am of the view that the court below was not justified in granting only Rs.3,000/- per cent of land for the land acquired for erecting towers. On the same reasoning, I am of the view that the compensation fixed on the ground of diminution of land value taking Rs.3,000/- as the value of the land per cent is also unsustainable.

5. In so far as the tree cutting compensation is concerned, the court below relied on the decision of the Full Bench of this Court in **Kumba Amma** v. **K.S.E.B**. (2000 (1) KLT 542 (F.B.)) and took 5% annuity as the basis for calculating tree cutting compensation. The counsel appearing for the Kerala State Electricity Board submitted that in *Kumba Amma's* case, there is no rigid rule laid down that 5% annuity should be the basis in all cases. It was held in *Kumba Amma's* case as follows:

> "44. Next, we have to consider what should be the rate of return to be applied in this case. As mentioned earlier, regarding the rate of return, the only contention raised by the petitioners is that it should be 5% as held in 1961 KLT 238 and not the higher rate as ordered in 1981 KLT 646. Eventhough reliance was placed by the

> petitioners on AIR 1988 AP 89 in support of their contention that the principle applied in 1981 KLT 646 was not correct, it is not contended by the petitioners before us that in their case, the rate of return as assessed by Jagannadha Rao, J. in AIR 1988 AP 89 should be applied. The dispute in this case arose when trees standing in petitioners' property were cut down on 9.9.1980. The respondents have not made available before us any material to show that the real rate of interest in 1980 was something different from 5%. Their only contention based on 1981 KLT 646 is that what is relevant is the prevalent rate of interest which was 10%. This contention we have already rejected, as such rate does not take into account the factor of inflation. Under these circumstances, we hold that the rate of interest to be applied in the present case is 5%. We hasten to add that we should not be understood as having laid down 5% as the real rate of interest for subsequent period. The rate of interest applicable in India has been held as 4% by Jagannadha Rao, J. in AIR 1988 AP 89. 11 years have lapsed after the above judgment. Whether it should be the same rate of return that has to be applied for the period before and after the above judgment or whether a higher or lower rate, is a matter to be decided in appropriate cases where relevant data is available. Till such time, the Board will adopt 5% as rate of return. But, we make it clear that cases finally concluded by decisions of the Court will not be reopened."

6. Learned counsel for the Board as well as the claimants also relied on the decision of the Supreme Court in **K.S.E.B.** v. **Livisha** (2007 (3) KLT 1 (SC)). In *Livisha's case*, the Supreme Court has laid down the principles in fixing the compensation for tree cutting at paragraphs 10 and 11 of the judgment, which read as follows:

> "10. The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be

> a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.
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> 11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."

7. In the light of the Supreme Court decision in *Livisha's* case, I am of the view that the Original Petitions are to be considered afresh taking into account the principles laid down in *Livisha's* case and applying the principles therein to the facts of the present cases. Such an exercise is not done in this case, as evidently the judgment in *Livisha's* case was rendered subsequently.

8. For the aforesaid reasons, I am of the view that the orders passed by the court below in O.P.(EA) Nos.17 of 2002, 32 of 2003 and 33 of 2003 are liable to be set aside and the court below shall be directed to consider the case afresh in the light of the principles laid down by the Supreme Court in *Livisha's* case and also the observations and findings rendered above. Accordingly, the Civil Revision Petitions are allowed and the orders referred to above are set aside. The cases are remanded to the trial court for fresh disposal in accordance with law and also in the light of the principles laid down by the Supreme Court in *Livisha's* case, other binding precedents and the observations and findings mentioned

above. The court below shall dispose of the cases as expeditiously as possible.

Parties shall appear before the court below on 9.1.2008.

(K.T.SANKARAN)
Judge

ahz/